

**Opening Australia's Archives:
Open Access Principles for Australian
Collecting Institutions**

Version 1

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Introduction

The internet, digital recording devices and the ready availability of content production software have together drastically changed the creative landscape. As a result, linear models of knowledge and cultural production are rapidly being supplanted by more distributed, collaborative, user-generated and open networking models. Yet Australians wishing to participate in this new digital culture have great difficulty gaining access to quality content from their own culture and history that can be legally and safely reused. This limits our ability to access the full benefits that could be provided by new technologies to fields such as education, the creative industries and business innovation.

The Opening Australia's Archives project aims to address this problem by working with Australia's collecting institutions to increase the public's ability to access and reuse our national collections. Run by the Innovation Law program of the ARC Centre of Excellence for Creative Industries and Innovation at Queensland University of Technology the project encourages the adoption of open access approaches through coordinated policy, implementation and advocacy initiatives across the collecting sector.

Opening Australia's Archives: Open Access Principles for Australian Collecting Institutions were prepared in consultation with representatives of the Australian collecting sector commencing with a series of meetings held nationally during 2009. For more information on the meetings, principles and project see the Opening Australia's Archives website.

Structure

This document consists of several separate sections:

- The Preamble – which describes the purpose of the Principles.
- The Foundation Policies – which set out the baseline goals for the Principles. They are intended to be high-level, aspirational standards, rather than detailed guidelines, and essentially seek to describe open access best practice.
- The Open Access Guidelines – which provide more detailed guidelines for implementing open access within an institution. These are designed to be more practical instructions for those developing institutional policies on public access.
- The Limiting Considerations – which aim to acknowledge that the Policies and Guidelines may need to be limited, or may not be appropriate at all, in some circumstances. The Limiting Considerations set out some of the more common matters that may be relevant in deciding to limit access to materials, as well as matters that would not usually be appropriate grounds for limiting access.
- Strategies – which provides more detailed examples of practical and flexible strategies that can be used to increase access to an institution's content, without limiting its continued ability to manage its collection or earn revenue. This section is not intended to be a definitive list, but aims to catalogue some of the models and approaches being used in Australia and worldwide.
- Case studies – which provides examples of open access initiatives being undertaken by collecting institutions at the local, state, national and international level.

The Principles

Preamble

These Principles aim to establish best practice standards for providing open access to material housed in institutional collections. They are intended to be of assistance to institutions developing or implementing digital strategies that incorporate open access philosophies or otherwise seek to increase public access to and reuse of collections. They do not purport to provide detailed or definitive analysis of all access models or approaches, but rather to assist with the understanding and adoption of more permissive access policies in the Australian collecting sector.

It is acknowledged that it may not be practical or appropriate to implement the Principles in all cases. However, it is argued that it is desirable, wherever possible, for publicly funded and non-profit institutions to aspire to providing as broad and complete access to their collections as possible. These Principles aim to help them do this.

Foundation policies

These Foundation Policies set out the baseline goals of the Principles and describe open access best practice. More detailed implementation guidelines are provided by the Open Access Guidelines below. Adapted from the recommendations of the UK report Creative Commons *Licensing Solutions for the Common Information Environment*.¹

1. **Encourage reuse:** Resources should be made available for free and permissive reuse unless there is a justifiable reason why they should not.
2. **Minimise limitations on purpose:** The purposes for which reuse of resources is permitted should be as unconstrained as possible. For example, resources should be made available for commercial reuse as well as non-commercial reuse wherever possible.
3. **Minimise limitations on activities:** The range of permitted uses of resources should be as wide as possible. For example, users should be granted the right to copy the resource, modify it and produce derivative works from it wherever possible.
4. **No geographic limitations:** Reuse should be encouraged by permitting others to redistribute resources on a world-wide basis.
5. **Provide technical ease of use:** Resources should be made directly available and discoverable electronically and in reuseable technological formats whenever possible.
6. **Provide legal ease of use:** The conditions of use for each resource should be linked directly to the resource so that they are reusable at the point of discovery and, wherever possible, should not require additional permissions from the institution or copyright owner.

¹ Intrallect, [Creative Commons Licensing Solutions for the Common Information Environment](#) 10 October 2005, p.25. Available under a [Creative Commons Attribution 2.0 UK](#) licence

Open access guidelines

The Foundation Policies are implemented by adhering to, wherever possible, the following guidelines when making material available to the public. Note that these are intended to be guidelines only, and may be limited or overturned in certain circumstances. The Limiting Considerations section below aims to describe and set standards for some such circumstances.

- Resources that have been identified as being in the public domain should be made freely reusable by the public wherever possible.
- Resources that are entirely owned by State or Federal governments or their agencies (including publicly funded collecting institutions) should be made available for free reuse on as permissive terms as possible.
- When dealing with orphan works, institutions should consider whether the flexible dealing exception in s200AB of the Copyright Act will allow them to be made available to the public.²
- Website and institutional terms of use should not seek to limit the legal reuse of resources (eg by excluding fair dealing or educational exceptions).
- While the legal position in Australia is unclear, as a matter of open access best practice copyright should not normally be asserted over verbatim copies of public domain resources which do not have independent originality, composition or creativity. Where copyright is asserted, the material should be licensed on as permissive terms as possible.
- Institutions should avoid placing commercial and other limitations on reuse wherever possible and should always assess whether such limitations are appropriate or necessary in the particular circumstance.
- Permission should not be required when others wish to link to an institution's website or resource.

² The Australian Digital Alliance's *Users Guide to Flexible Dealing Provision for Libraries, Educational Institutions and Cultural Institutions* (2008) can provide guidance in identifying when the s200AB exception applies to orphan works. See <http://www.digital.org.au/documents/FlexibleDealingHandbookfinal.pdf>

Limiting considerations

Below are examples of matters that may be relevant in determining whether the Foundation Policies and Open Access Guidelines are appropriate in particular cases. They constitute valid reasons to limit access to material.

- Legal considerations, for example copyright, moral rights, privacy and national security Cultural considerations, for example in relation to indigenous resources
- Ethical considerations, for example in relation to resources dealing with minors
- Cost recovery requirements, where costs are incurred by the institution in responding to a specific request, such as investigating the copyright status of a previously uncleared object or providing the resource in a particular format or quality
- Demonstrated commercial disadvantage to the institution or the copyright owner (where copyright still applies)
- Valid donor concerns or rights

The following considerations will not usually be valid reasons to limit access to material; however they may be relevant when prioritising material for release.

- Potential embarrassment to public figures, institutions or the government
- Protecting works from 'undesirable' users or uses (eg commercial entities or 'bad' remixing)
- Categorising the resource as unimportant or not 'worthy' of release
- Unsubstantiated concerns that there may be unidentified legal problems with the resource (ie extreme risk aversion)
- Fundraising for the institution generally, as opposed to recovery of costs incurred as a result of a client request
- Protecting existing distribution policies and models without assessing their efficacy
- General concerns about the 'veracity' of a resource being compromised by third party reuse (noting that the copy on the institution's website remains as an authoritative version)

Strategies

The following strategies may be of assistance for those wishing to implement open access at their institution, in order to address concerns and maximise positive impact. They are suggestions only, drawing on approaches already being used by collecting institutions in Australia and internationally, and may not be appropriate for all situations.

Easy first steps

- Start with low-risk steps, such as marking public domain material on your website as free for reuse. Examples of works that should be in the public domain include photographs taken before 1955 and works by authors who died before 1955.
- Identify materials that the institution owns the copyright of and release them under broad terms of use (such as a Creative Commons licence). This may, for example, include catalogue data, descriptions of collection items, institution policies and photographs of non-copyright objects in the collection (ie not books or art). These materials can be very useful for historians, teachers and groups like Wikimedia but are not usually monetised, and so can be made available for reuse with little or no disadvantage to the institution.
- Identify materials within your collection that have a single, easily locatable copyright owner – such as a collection of photos deposited by the photographer – and negotiate directly with them about the terms on which the material is made available to the public.
- Incorporate an optional public access licence into your collection agreement. This highlights the issue of user access and gives donors the option of making their material more broadly available should they choose to. You may like to provide a range of options to donors, such as offering a choice of all rights reserved and the Creative Commons licences.
- Try to make materials, wherever possible, available for reuse under upfront terms rather than requiring case-by-case permissions. Ensure these terms of use are user friendly, so staff members and visitors are aware of their rights and obligations.

When developing terms of use for online material

- Apply a graduated permission scale for different materials, users and uses, rather than treating open access as an ‘all or nothing’ prospect - eg posting more difficult materials online under ‘all rights reserved’ or non-commercial terms of use while easy materials are made available for reuse or remixing.
- Encourage beneficial reuses such as translations and educational use.
- Following the example of the Flickr Commons project, consider using the label ‘no known restrictions’ instead of ‘public domain’ for works that are free of copyright if you wish to limit any impression of a ‘guarantee’ or ‘assurance’ by the institution.
- Alternatively, provide no overt copyright status for works (granting or restricting use) but instead provide users with the information they need to make their own assessment – such as the name of the author, date and place of publication etc. This information could potentially be coupled with guidelines to assist with determinations (eg a copyright page stating ‘photographs before 1955 will usually be in the public domain’).

When responding to permission inquiries

- Establish clear guidelines as to when material is or is not available for reuse by members of the public and make them available to both staff and the public (eg by publishing them on the institutional website). This increases certainty for both the institution and the user and promotes consistency in institutional decisions, thereby reducing costs and risks associated with ad hoc clearances.
- Create standardised terms of use, or use standardised licences such as Creative Commons, for common and easy permissions (eg use by private individuals or teachers) and use case-by-case permissions only for more sensitive requests (eg commercial use of material). This reduces administrative costs and delays, and makes more efficient use of expert staff time.
- Rather than completely restricting access to material, consider whether more permissive terms might be appropriate for at least some reuse activities. Different strategies and approaches may be applied, for example, to ‘accessing’ (ie viewing), ‘copying’ (ie printing and downloading), ‘distributing’ (ie embedding, sharing or otherwise disseminating) or ‘remixing’ (ie changing or adapting) material.

- When the copyright status of a work is investigated in response to an individual clearance request, accurately record the information uncovered to avoid having to do the same work each time.
- Consider making copyright information about materials available to the public, so that they can make an informed decision about whether the material may be able to be used before approaching the institution.

When collecting material

- Actively suggest open access licensing to donors, and educate them about its benefits if necessary. Some may be happy to be happy to make their material available under more permissive terms once they know it is an option.
- Consult with creators and donors in advance about any particular concerns they have regarding their materials, in case of unusual situations (such as concerns about mass reproduction of indigenous items).
- When dealing with single large donors (such as government departments) suggest changes where contracts do not provide best practice access, rather than merely accepting the first offer.
- Where appropriate, establish compulsory standards or clear policies (whether on an institutional or sectoral basis) about what access permissions donors must agree to before their material will be accepted by the institution. This will often be a good strategy, for example, in relation to projects dealing with user-generated materials intended for distribution or reuse.

When providing access to material

- Where possible, use open preservation standards and technologies to limit the impact of obsolete technologies.
- Similarly, use standardised licences (such as Creative Commons licences) where possible. This helps to ensure your material is legally compatible for use with other material and minimises licence proliferation (ie the development of thousands of almost-but-not-quite identical licences).
- Include as much copyright information as possible in metadata, making it available for the institution and users. This makes it easier for people to identify material appropriate for their

uses and enables users to make their own copyright determinations. Including the copyright status of an item as a search parameter further enhances such benefits.

- Include attribution guidelines, statements or tools (eg building attribution into downloadable files) to encourage best practice acknowledgment of and linking back to the institution.
- Provide clear contextual information about material and guidelines on cultural sensitivities on the institution's website to discourage misuse/prevent material from being misconstrued.
- Following the example of Wikipedia and YouTube establish reporting systems for users to report abuse rather than relying solely on institution moderation to manage user generated content such as comments and tagging. This reduces costs and staff requirement, encourages more user participation, and avoids the impression that the institution has 'approved' moderated content.
- Actively 'seed' museum resources on popular sites such as Wikipedia and YouTube to increase their profile while at the same time ensuring accurate contextual information and best practice attribution and linking.

When dealing with orphan works

- Orphan works may be able to be made available under s200AB, subject to an appropriate assessment that incorporates legal, ethical, public interest, creator interest and privacy matters.
- Develop clear policies as to what steps should be taken to attempt to identify and contact rights holders and keep records of the steps taken in individual cases. This may, for example, incorporate public consultation and a notice of intention to publish.
- When making orphan works available online under s200AB, incorporate 'good faith' statements explaining that best practice efforts have been made to identify copyright owners and inviting interested parties to contact the institution.
- Develop clear policies for dealing with circumstances in which interested parties do come forward. This may incorporate, for example, processes for the removal of material and amendment of copyright statements.

When writing institutional policies

- Develop a single policy that incorporates both preservation and access, to increase efficiencies and ensure coordinated planning towards access from the outset. Ensure this policy is acknowledged/incorporated into the institution's higher level strategic and digitisation plans.
- Always take the institution's mission statement and goals into account when setting policies, as well as legal and financial considerations.
- Build (or build on where they already exist) access goals into the institution's core functions and establishing acts, creating a positive obligation to provide best practice access.
- Consider undertaking public consultation, to establish staff and community wants and needs with respect to collection access. This can be useful both in setting standards and determining priorities.
- Establish 'notice and takedown' procedures for dealing with requests to remove material from an institutional website. This should include clear guidelines on the circumstances in which it is appropriate for material to be removed (eg copyright infringement, cultural sensitivity etc) and the circumstances in which it is not.
- Recognise that diversity in quality, subject matter and copyright status does not detract from a collection. Having some material available for open access – even if it is not complete or of the highest quality – is better than none.
- Once policies have been determined, develop a detailed strategy or plan for their implementation.
- Establish staff position/s specifically tasked with creating/supporting access initiatives.

When considering business models

- Regularly reassess your business models to determine whether they remain efficient and effective in the changing technological environment.
- Consider instituting 'freemium' business models. Under such models, broad public access is used to draw attention to material, whilst commercial licensing/reproduction options are used to track/monetize the increased demand and profile (eg by placing advertisements for sales of prints next to open access downloads).

- Wherever possible, complete and high quality versions of work should be made freely available, as these are the most useful for downstream users. However, making excerpts or low quality versions of works, such as samples, previews, single chapters and low resolution thumbnails, available is preferable to not making the material available at all. Many institutions make 'lower quality' versions available for free while charging for high quality versions that require more resources to create.
- Reduce costs by working collaboratively with users, communities (eg Wikimedia) and other institutions to document, tag, provide access to and even curate collections. For example, as per the Australian Newspaper project, use web 2.0 technologies to allow volunteers to edit or add to information about a collection item. If there are concerns about veracity/authority of user-generated metadata/tags etc, mark it differently to curator material.
- Take advantage of storage/web 2.0 etc tools provided by commercial bodies such as Flickr and YouTube to reduce costs, streamline technical processes and increase discoverability of material.
- Use open access as a 'selling point' when applying for grants.

For sector-wide collaboration

- Participate in existing cross-institutional projects and sector-wide initiatives to encourage consistency and create efficiencies.
- Share internal policies and guidelines with other institutions, to increase consistency and avoid reinventing the wheel.
- Develop a record of documents, case studies and statistics (whether internally, cross institutionally or sector-wide) which demonstrate the benefits of open access - for donors, managers and funders.
- Push for measures of impact, reuse and access to be included in KPIs to ensure 'value' is not measured in sales alone.
- Incorporate open access as a mandatory or desirable requirement of funding programs provided by the sector. This strategy is used by research funding groups such as the Gates Foundation, Wellcome Trust and US National Institute for Health, which all mandate open access.
- Large institutions and smaller institutions can work together to develop collaborative platforms to reduce costs, create efficiencies, increase discoverability and share expertise.

Case Studies

Below are examples of successful and best practice open access projects, or projects relevant to open access around Australia and internationally.

State and local

[SA Music](#)

The [State Library of South Australia](#) is publishing digital scans of sheet music for public access and reuse via both the [SA Music](#) and [Music Australia](#) portals. The digitised collection includes a number of orphan works, which have been published with a disclaimer stating “where the copyright owner has not been able to be traced, or where the permission is still being sought, the Library has decided in good faith to proceed with digitisation and publication. The State Library invites persons who believe they are copyright owners to contact Library staff to discuss usage of this item.” There are plans to provide audio tracks for the music in future.

[The Powerhouse Museum](#)

The Powerhouse Museum is using [Creative Commons](#) licensing to allow reuse of museum-created content such as educational materials, photographs and collections documentation and data. This has encouraged the improvement of these resources by members of the public (eg by adding new data, identifying unknown materials etc) and increasing their reuse on Wikipedia (see [here](#)).

[Murdoch University Research Repository](#)

[Murdoch University](#) provides an open access digital collection of research created by its staff and students, as part of the [Australia Research Repositories Online to the World](#) (ARROW) project. The open access focus was a core element of the project from the start, with significant support from the University’s administration, which saw value in the marketing, profile raising and cost efficiencies for the institution and its researchers. Having a firm policy up front significantly simplified the development process, with the focus being on lowering barriers for participation by making it easy for researchers to submit and showcase material. Researchers are not required to upload their material, but access statistics are published to create a competitive incentive for submission.

[Historical Records Rescue Consortium](#)

Since 2004 the HRRRC consortium of interests groups has received multiple grants from [LotteryWest](#) to preserve historical records held in the [J S Battye Library of West Australian History](#). As part of its application process, the HRRRC undertook community consultation to determine demand, garner support and establish community priorities. Based on this consultation, the HRRRC is prioritising historic newspapers, photographs and films. A selection of materials is being linked to the State Library of Western Australia's online catalogue for free online access for research and educational use.

[The State Library of Victoria](#)

The SLV is currently undertaking a large-scale digitisation and access project. Starting with public domain photographs, it is aiming to provide as much material as possible for free access without restrictions, including free high resolution downloads through its website. Material is to be marked as 'in copyright', 'out of copyright' or 'unknown' (see, for example, [Group of miners cradling for gold](#)). Specific statements will be included on sensitive material and orphan works, and a policy is in place for responding to copyright notifications and queries. SLV have found this pro-active permission approach provides significant efficiency gains, through reduction in administrative and staff costs associated with providing case-by-case permissions.

[The Public Records Office of Victoria](#)

The PROV is making a large number of documents available for free access online, including digitised versions of wills, probates and administration records from 1841-1925. A copyright and privacy assessment of the documents has been undertaken as part of their risk management. Although the materials are not explicitly provided under open access terms of use, there is no intention to try to prevent or charge for reuse. They also intend to allow user editing of automatic transcripts of handwritten documents.

[The Queensland Museum](#)

In May 2010 the Queensland Museum launched its new website, providing access to more than 40,000 objects and specimens from its collection, including its significant biodiversity collection. As part of the launch, the Queensland Museum also made a number of its learning resources, including its downloadable teacher resources, available through its interactive [Celebration of Culture](#) portal,

under a Creative Commons Attribution-Noncommercial-ShareAlike licence, which allows distribution and remixing.

The Queensland Museum has also, as a trial, made [20 public domain images](#) by Bert Roberts from its collection available for free download and reuse on [Wikimedia](#)'s open access database, [Wiki Commons](#). The project was conceived after representatives of the Museum attended the [GLAM-Wiki](#) conference in Canberra in August 2009. Wiki Commons was chosen over other photo hosting sites such as [Flickr](#) due to its links to [Wikipedia](#), which encourage the images to be directly incorporated into Wikipedia articles. The Museum has already had new information revealed about the photographs since posting them to Wiki Commons; however, it is still developing strategies to monitor usage and repurposing of free media files. See more [here](#).

[The State Library of Queensland](#)

The SLQ is digitising and providing free access to a range of public domain material from their collection. Their most prominent initiatives are:

- their participation in [Flickr Commons](#) which has seen them upload more than 400 photographs under the 'no known rights' label; and
- their provision of digitised versions of a number of historic novels through their catalogue, including Queensland's first novel, [The Curse and its Cure](#) by T.P. Lucas

National

[Australian Screen](#)

An initiative of the [National Film and Sound Archive](#), Australian Screen provides clips, curator's notes and other resources for over 1,300 Australian films and television programs. All material on the site can be copied and distributed for personal use or for non-commercial educational purposes.

[Australian Newspapers](#)

Led by the [National Library of Australia](#), this initiative is an online database of fully text-searchable scans of over 600,000 pages from Australian historical newspapers. Searchable text versions which have been automatically generated are displayed alongside the original scans. Rather than delaying

the release of the material until staff are able to correct errors in the automatically generated text versions, the project is crowdsourcing text correction and metadata functions by allowing registered users to edit them. This reduces the time and cost of the uploads without compromising the integrity of the material, as the original scan always remains as the 'authentic' version. The initiative has been extremely successful, with over 1,300 volunteers having corrected more than 3.4 million lines from 160,000 pages in the first 6 months alone.

[Pool](#)

Pool is the [ABC's](#) social media R&D lab where the broadcaster and the public meet as peers to share, learn and co-create.

Most notably, Pool has enabled the first release of [ABC archives content](#) under [Creative Commons](#) licences for remix and rebuilding, including video, audio and photographs. Pool is now in the process of conforming metadata to enable interoperability with other public collection institutions. The next phase of development will see an opening up of its API to allow the study of external mashups of the ABC's public media content.

[Now and Then](#)

The [Collections Council of Australia](#) is currently trialling this community heritage web project, which utilises wiki technology to allow local communities to record, explore and share information about their history and life today. All members of the public are invited to contribute and edit entries on particular communities and the places, people, events, organisations and things that make them unique. Now and Then has recently launched its pilot community Mallala, South Australia.

International

[Flickr Commons](#)

This project, part of Google's [Flickr](#) image portal, has seen 20 museums internationally, including the [Australian War Memorial](#), the [Australian National Maritime Museum](#), the [State Library of New South Wales](#), the [State Library of Queensland](#) and the [Powerhouse Museum](#), upload tens of thousands of public domain images to a dedicated group. Copyright on all of the photos is marked as "No known restrictions". The initiative has had particular success as an audience engagement mechanism, with hundreds of user-generated tags, identification of objects and places, vastly increased web traffic

and improved awareness of the collections of the institutions involved. The Powerhouse Museum's Flickr Commons participation is particularly notable, as it has seen the museum release high resolution copies of many of its most highly valued images for free online. Paula Bray of the Powerhouse has [reported](#) that the museum's participation in this initiative has resulted in an increase in photograph sales and, taking all factors into account, has most likely produced a net profit for the museum. The Museum is now building open access into its digital strategy and key performance indicators (see [here](#)).

[The Brooklyn Museum](#)

The Brooklyn Museum has embraced open access principles across their collections policy. Not only are they major contributors to the Flickr Commons project, they also identify public domain material on their website and license the website and their [online image collection](#) by default under a Creative Commons licence. Initially having chosen the [Creative Commons Attribution-NonCommercial-NoDerivatives](#) licence, which only allows distribution, they later moved to the broader [Attribution-NonCommercial](#), which also allows remixing. They now provide API access to this collection, allowing users to incorporate the material directly into their own [web 2.0 applications](#). The Brooklyn Museum has also run a music remix contest with Blondie's Chris Stein as part of their [Who Shot Rock and Roll](#) exhibition. Read more about The Brooklyn Museum's open access initiatives [here](#).

[Massachusetts Institute of Technology OpenCourseWare](#)

The OpenCourseWare initiative has been making Massachusetts Institute of Technology (MIT) course materials (unit outlines, lesson plans etc) available for free reuse by the general public since 2002. It currently includes materials for all of MIT's more than 1900 courses. Collectively, these courses have been accessed by more than 62 million separate visitors. The materials are available via a dedicated website under a [Creative Commons Attribution-Noncommercial-ShareAlike](#) licence. MIT has [reported](#) widely on the benefits it gains from providing open access to its materials, including increased profile, higher-quality materials and improved student and community engagement.

Following the success of the MIT project, an [OpenCourseWare Consortium](#) has been established making course materials from hundreds of universities internationally available for free online, including Oxford University, John Hopkins and UC Berkley.

[Bundesarchiv](#)

In 2009 the German Federal Archive released 100,000 photographs for free reuse on Wiki Commons. Similar to the Powerhouse Museum's experience, the Archive has reported that sales of prints of the photographs have doubled since the release – see a presentation about the initiative [here](#).

[Tropenmuseum](#)

This Dutch institution has collaborated with the local Wikimedia community by inviting Wikimedia members to document public domain materials in the museum's collection (eg through photography). This provided free preservation and metadata for the museum while at the same time overcoming copyright barriers for reuse of the material on Wikipedia – see further in this [video](#).

[Project Guttenberg](#)

This US-initiated project has been 'encouraging the creation and distribution' of free ebooks since 1971, in collaboration with national affiliates around the world. The project currently provides digital copies of over 100,000 public domain books in multiple formats, all of which have been created and provided entirely by volunteers.

[The Smithsonian](#)

In August the US's largest museum released their [Web and New Media Strategy](#), which aims to encourage sharing of Smithsonian materials and lay the groundwork for a Smithsonian Commons, described as "a new part of our digital presence dedicated to stimulating learning, creation, and innovation through open access to Smithsonian research, collections and communities." The development of the strategy followed positive experiences from the Museum's involvement with the Flickr Commons project, among other test projects. Importantly, this participation reversed a long running institutional policy of controlling public domain material via restrictive terms of use and licensing fees. The strategy is licensed under a Creative Commons Attribution licence.

Standards and Tools

[Standards and Guidelines: an E-directory](#)

SAGE is an online information service provided by the [Collections Council of Australia](#) to collect and assist collecting organisations to identify relevant standards and guidelines. SAGE provides a list of relevant standards and, where possible, evaluates them by providing comments on coverage, usability and relationship to other standards. SAGE operates in conjunction with the Digital Standards Bibliography, Version 3.0, providing updated information about the standards included on the Bibliography.

[The University of Melbourne's Centre for Media and Communications Law](#)

The CMCL group is currently working with the [Arts Law Centre of Australia](#) to develop a standard donor agreement for collecting institutions, in consultation with representatives of the sector. The aim is to provide clearer rules, more certainty and best practice drafting for donor agreements, with a view to increasing the information and choices available to institutions and donors alike.

[The State Library of Western Australia SLURP](#)

SLWA is currently developing this rights management tool, which aims to provide best practice preservation and access standards. SLURP incorporates standardised metadata forms and automatic format shifting, all integrated directly into the library's catalogue.

[The National Library of Australia Catalogue](#)

The [NLA](#) has recently incorporated an algorithm into its catalogue that automatically estimates the copyright status of works based on metadata such as the author's death and the publication date. This information is made available to members of the public, along with a disclaimer noting the information may not be entirely accurate. This provides users with the ability to make their own copyright and risk management judgments.

[Re-imagining Library Services Strategic Plan](#)

In July 2008 [National and State Libraries Australasia](#) (NSLA) released this collaboratively produced document, which outlines the way member organisations can embrace new opportunities in service

delivery. One of the three core strategies of the project is Accessible Content which aims to “empower everyone to find, share and create content”. Re-imagining Libraries has 10 implementation projects, including:

- Open borders - opening up access to e-resources and services across our libraries;
- Virtual reference - integrating virtual reference as a core function, with a new business and resourcing model;
- Community created content - identifying and implementing a framework and tool set for everyone to create and transform online content;
- Scaling up digitisation - demonstrating the economic benefits of mass digitisation and defining best practice in management of digital collections; and
- Connecting and discovering content - enhancing metadata and making collection holdings more visible and linked online.

Source Materials

The Open Access Principles for Australian Collecting Institutions draw on the following national and international standards, statements and recommendations.

The [Budapest Open Access Initiative](#) – the Open Society Institute

In particular, the following definition of “open access”

free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts . . . crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain, should be to give authors control over the integrity of their work and the right to be properly acknowledged and cited.

[Creative Commons Licensing Solutions for the Common Information Environment](#) - Intrallect

In particular, the following recommendations:

1. Resources should be made available for reuse unless there is a justifiable reason why they should not.
2. The reuse of resources should be as unconstrained as possible. For example, resources should be made available for commercial reuse as well as non-commercial reuse wherever possible.
3. The range of permitted uses of resources should be as wide as possible, for example, including the right to modify the resource and produce derivative works from it.
4. Reuse should be encouraged by permitting others to redistribute resources on a world-wide basis.
5. Resources should be made directly available and discoverable electronically whenever possible.
6. The conditions of use for each resource should be linked directly to the resource so that they are reusable at the point of discovery.³

³ Intrallect, [Creative Commons Licensing Solutions for the Common Information Environment](#) 10 October 2005, p.25. Available under a [Creative Commons Attribution 2.0 UK](#) licence

[Europeana Public Domain Charter](#) – Europeana Group

In particular, the following principles:

Europeana, Europe's digital library, museum and archive, belongs to the public and must represent the public interest.

The Public Domain is the material from which society derives knowledge and fashions new cultural works.

Having a healthy and thriving Public Domain is essential to the social and economic well-being of society.

Digitisation of Public Domain content does not create new rights over it: works that are in the Public Domain in analogue form continue to be in the Public Domain once they have been digitised.⁴

[Policy Guidelines for the Development and Promotion of Governmental Public Domain Information](#) - [United Nations Educational, Scientific and Cultural Organization](#) - UNESCO

In particular, the following statement:

As a guiding principle, information produced by public entities in all branches and at all levels should be presumed to be available to the public.⁵

[Power of Information Taskforce Report](#) - UK

Quoting Gordon Brown, British Prime Minister, [Liberty Speech](#), 29 October 2007:

to protect individual liberty we should have the freest possible flow of information between government and the people...Public information does not belong to Government, it belongs to the public on whose behalf government is conducted.⁶

"

⁴ Europeana Group, [Europeana Public Domain Charter](#), May 2010, p.1

⁵ Paul f. Uhlir, [Policy Guidelines for the Development and Promotion of Governmental Public Domain Information](#), 2004, p.vi

⁶ [Power of Information Taskforce Report](#), February 2009, p.22

In particular:

Requests to GLAM

- Use a "free-culture" Creative Commons license (either CC-by or CC-by-SA) for content on GLAM websites which is owned/controlled by the institution e.g. fact sheets, inventory files, photos of objects, statements of object significance and educational materials.
- Pro-actively publish the copyright status of specific content in the online collection rather than blanket access statements for the whole collection. Give guidelines for users to make their own copyright assessment.
- Make the access policy for use of controlled/in-copyright content clear. Explain the purpose of this policy as it relates to the project or institution's mission statement.
- Remove the policy that requires users to ask permission for use of public domain content.
- Consider offering a free-license for lower resolution/sized institution-controlled, in-copyright content (retaining full copyright over higher resolution).
- Remove claim of copyright over scans/photographs of Public Domain content as per the "originality" principle.
- Where content is already licensed as "free for educational use" use a "free-culture" creative commons license instead.
- Remove "clickwrap" and contracts which place copyright-like restrictions on public domain content.
- Where specific access restrictions or donor requests are placed on items (whether in or out of copyright) indicate these on the public record. If the item is out of copyright yet the donor's request was to disallow third-party use consider taking the content offline to avoid future conflict.
- Educate donors about potential for re-use by third parties as part of the donation process.
- If usage of an institution's controlled content in Wikimedia projects is contested, engage in open discussion rather than private legal action.
- Make permission/digitisation request processes digital rather than requiring hard copies.⁷

⁷ Wikimedia Australia, [Recommendations from GLAM-WIKI: finding the common ground](#), August 2009

[The Seoul Declaration for the Future of the Internet Economy](#) and the accompanying [Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information - Organisation for Economic Co-operation and Development](#) (OECD).

In particular, the principles seek to implement the following declarations, which were endorsed by the Australian government at the OECD Ministerial Meeting on the Future of the Internet Economy on 18 June 2008:

WE DECLARE that, to contribute to the development of the Internet Economy, we will:

...

Foster creativity in the development, use and application of the Internet, through policies that:

- Maintain an open environment that supports the free flow of information, research, innovation, entrepreneur-ship and business transformation.
- Make public sector information and content, including scientific data, and works of cultural heritage more widely accessible in digital format.

...

- Encourage universities, governments, public research, users and business to work together in collaborative innovation networks and to make use of shared experimental Internet facilities.
- Combine efforts to combat digital piracy with innovative approaches which provide creators and rights holders with incentives to create and disseminate works in a manner that is beneficial to creators, users and our economies as a whole.
- Encourage new collaborative Internet-based models and social networks for the creation, distribution and use of digital content that fully recognise the rights of creators and the interests of users.
- Strengthen the development of human resources to take full advantage of the Internet and related ICTs, and further develop ICT skills and digital and media literacy.⁸

⁸ [Organisation for Economic Co-operation and Development's](#) (OECD) [Seoul Declaration for the Future of the Internet Economy](#), 18 June 2008, p.7

[Venturous Australia: building strength in innovation](#) - [The Review of the National Innovation System](#)

- **Recommendation 7.14** - To the maximum extent practicable, information, research and content funded by Australian governments – including national collections – should be made freely available over the internet as part of the global public commons.⁹

[Web and New Media Strategy](#) - [The Smithsonian](#)

Various principles, including the following standard:

Content Usage: Establish a pan-Institutional policy for sharing and using the Smithsonian’s digital content, with particular focus on Copyright and Public Domain policies that encourage the appropriate re-use and sharing of Smithsonian resources.¹⁰

And the following benefits:

- **Audience Growth:** Through the Smithsonian Commons we can seed the Internet with high-value content and use social networks to increase the relevance and value of our work. Audiences—especially digitally savvy audiences and younger visitors—will immediately understand and respond to the idea of a free Smithsonian Commons. Improved content, features, and clarity can drive audience growth.
- **Revenue Generation in Harmony with Mission:** Attempting to directly monetize access to, and use of, museum content does not appear to be a sustainable business model. Through these low-margin business practices, we alienate users, perpetuate the practice of institutions charging each other, discourage research and publications, and undermine our civic mission. The commons presents an alternative: gradually reduce our dependence on access and use fees by aggregating larger number of visitors under a strong brand supported by sponsorships and other value-added products and services. It is likely that the Smithsonian will make more money by promoting “free” resources to a large audience than it can make charging small amounts for small transactions to a small audience, and it is a much better fit with the mission.¹¹

⁹ Cutler and Co, [Venturous Australia: building strength in innovation](#), 29 August 2008, p.98

¹⁰ Smithsonian Institution, [Web and New Media Strategy](#), Version 1.0, July 2009, p.18

¹¹ Smithsonian Institution, [Web and New Media Strategy](#), Version 1.0, July 2009, p.21

Glossary

s200AB

The flexible dealing exception set out in [s200AB](#) of the Australian [Copyright Act 1968](#). Section 200AB(2) permits any dealing with copyright material that is made on the behalf of a library, archive and other collecting institution and that is:

- for the purpose of maintaining or operating the library or archives (including operating the library or archives to provide services of a kind usually provided by a library or archives);
- not made partly for the purpose of the body obtaining a commercial advantage or profit;
- does not conflict with a normal exploitation of the work or other subject-matter;
- does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
- is a special case

For more information on the application of the exception, see the Australian Digital Alliance's [Users Guide to Flexible Dealing Provision for Libraries, Educational Institutions and Cultural Institutions](#) (2008).

Creative Commons

Creative Commons is an international non-profit that provides free licences and tools that copyright owners can use to allow others to share, reuse and remix their material, legally.

Creative Commons builds upon the “all rights reserved” of traditional copyright to create a voluntary “some rights reserved” system. It offers a range of [licences](#) that creators can use to manage their copyright in the online environment, each with its own specific protections and freedoms, but all of them making the material available on more permissive terms than default copyright law. This creates a pool of material that can be legally reused without the need to ask the copyright owner for permission. There are currently more than 250 million works available online under the Creative Commons licences.

The [Creative Commons Australia](#) website provides more information about the licences, the philosophy and how to find material.

Open access

‘Open access’ has many different interpretations internationally. However, for the purposes of this paper, we are using the term ‘open access’ to mean permissive licensing policies that encourage the greatest possible public reuse of material. Open access models use licences and terms of use to give permission in advance for certain uses of material, without requiring users to contact the institution or copyright owner directly for permission. At a minimum, open access policies tend to allow reproduction and distribution of material.

Orphan work

The Australian Copyright Council defines an orphan work as a work “that is protected by copyright but for which the owner cannot be identified and/or located. This creates problems for those wishing to reuse the work, as it makes it impossible to obtain permission from the copyright owners. The orphan work problem is exacerbated by the fact that lack of information means that in many cases it is difficult or impossible to even determine whether the work is still protected by copyright. The high occurrence of orphan works in most institutional collections presents a significant barrier to large-scale digitisation and access projects. For more information, see the Library of Congress’ [Report on Orphan Works](#) (2006).

Public domain

The term ‘public domain’ is used by different people in different ways. However, for the purpose of this paper we are using it in its legal form ie to mean material that is not covered by copyright and so can be reused without legal restriction. This will most commonly occur when the copyright protection for a work expires.

Copyright only lasts for a set period of time. Once copyright in a work ends it enters the public domain and can be legally used for any purpose without limitation. Determining definitively whether a work is in the public domain can often be extremely difficult, due primarily to the complexity of the law regarding the term of copyright and a lack of information on the origins of many works. However, there are large categories of works which are likely to be in the public domain eg photographs taken before 1955 and works by authors who died before 1955. For more information about what works may be in the public domain in Australia see the Australian Copyright Council’s information sheet [Works in the public domain in Australia](#).

Resource

Any item that is made available for public reuse by an institution, usually online. This may include, for example, digitised collection items, policy documents, educational materials, interactive programs, videos, photographs and other online materials owned or managed by the institution.

Reuse

The ability to make use of an item beyond merely viewing or accessing it. At a minimum, it includes the right to copy and download a work for personal use, although it may also extend to its adaptation (eg remixing), distribution or commercial use. For example, the statement “resources should be made available for free and permissive reuse unless there is a justifiable reason why they should not” is intended to mean that users should be given the maximum legal right to use an item - including copying, downloading, distributing and adapting it - that is reasonable in the circumstances.